THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE DR. JUSTICE G.YETHIRAJULU

WRIT APPEAL Nos.1959, 1983, 1840,1994, 2003, 2004, 2015, 2019, 2020, 2021, 2024, 2025, 2030,2032, 2037, 2044, 2047, 2066, 2071, 2077, 2109, 2112, 2184, 2216, 2268, 2276, 2281, 2282, 2291, 2310, 2311, 2338, 2339, 2341, 2372, 2373, 2374, 2378, 2390, 2391, 2392, 2393, 2403, 2411, 2413, 2422, 2423, 2489,2491, 2492, 2493, 2494 of 2005

AND

W.A. Nos.2600, 2601, 2602, 2603,

2604, 2605, 2606 and 2607 of 2005

DATED: 26.12.2005

WRIT APPEAL No.1959 of 2005

Between:

The General Manager, Telecom District, B.S.N.L,. Anantapur and others

….Appellants

A n d

M.N.Raja Kumar S/o M.Narasappa and others

…Respondents

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COMMON JUDGMENT: (Per Hon'ble Sri Justice B.Prakash Rao)

Heard the learned Advocate General, Ms. P.Sarada, Sri Ravindra Yanamandra, Sri B.Devanand, Sri Kanthi Narahari and Sri C.Yadagiri, learned counsel appearing on behalf of the appellants (BSNL) and Sri K.Venkateswara Rao and Sri Vemuri Venkateswara Rao, learned counsel appearing on behalf of the respondents/employees. These appeals are filed by both the BSNL as well as its employees, as against partially allowing of the writ petitions filed by the employees.

Since all these appeals involve common question, they are being taken up together for disposal.

The appellants are the different wings of the BSNL, who seek to assail the orders of the learned single Judge allowing the writ petitions filed by their own employees, seeking for a Mandamus declaring that they are entitled for placement in the scale of Rs.4000-100-6000 in the cadre of Telecom Mechanics on completion of 16 years of service from the date of their appointment as Regular Mazdoors/Group-D in terms of the Judgment of a Division Bench of this Court in W.P.No.14744 of 2001 dated 16.10.2003 with all consequential benefits including the benefit of I.D.A scales with effect from 01.01.2005 whereas the employees also filed appeals challenging the orders granting the benefit effect from 1.1.2005 only, but claiming the benefit from the date of their entitlement.

The facts of the case in brief, which are necessary for disposal of these matters, are that the respondents are working as Regular Mazdoors/Group-D employees with the appellant herein and subsequently, they have been promoted at various points of time as Telecom Mechanics. The Department of Telecom issued letter dated 20.4.1999 extending the higher pay scales in the cadre of Phone Mechanics/Telecom Mechanics to those Group `C' officials, who enter the

restructured cadre of Phone Mechanics. However, some of the affected persons, who were similarly placed and working as Mazdoors and who have been denied such benefit of higher pay scale of Rs.4000-100-6000, filed a case before the Central Administrative Tribunal in O.A.No.1966 of 1999 challenging the said letter imposing certain restrictions in regard to their entitlement. After contest, the said case was allowed by the Tribunal on 9.8.2000 holding that there is a discrimination among two categories of Phone Mechanics and set aside the impugned letter dated 20.4.1999. Further, it was directed that the applicants should be placed in the scale of pay of Rs.4000-100-6000.

Challenging the same, the appellants herein filed a writ petition in W.P.No.14744 of 2001 and ultimately the said writ petition after contest was dismissed as per orders dated 16.10.2003 upholding the orders of the Tribunal. Even, the S.L.P filed by the appellants herein in the Supreme Court was dismissed on 23.07.2004. Having regard to the same, the respondents herein, who are also working in the same post, filed writ petitions claiming the self same relief.

A learned single Judge of this Court after hearing both sides and after taking in to consideration various aspects raised, allowed the writ petitions having regard to the similarity for entitlement and directed that the respondents/petitioners shall be extended the notional benefit of the pay scale of Rs.4000-6000 on par with the Group-C employees with effect from the date of their entitlement, but the monetary benefit shall be extended only with effect from 01.01.2005. Hence these appeals.

The learned Advocate General sought to contend that having regard to the serious laches and unexplained delay on the part of the respondents/petitioners herein in approaching this Court under Article 226 of the Constitution of India, even though, they are placed in a similar situation, this Court could not exercise any such extraordinary jurisdiction nor could show any indulgence in their support.

The learned counsel appearing on behalf of the respondents herein sought to sustain the order on the ground that it is only by taking in to consideration the

aforesaid aspects, the learned single Judge has rightly restricted payment only with effect from 01.01.2005 and therefore, the orders would not warrant any interference in these appeals.

Having considered the detailed submissions made on either side and on perusal of the material, the point which arise for consideration in these appeals is as to whether the respondents are entitled to the relief as sought for, in spite of such admitted delay, in exercise of powers of this Court under Article 226 of the Constitution of India.

There is no dispute in regard to the aforesaid bare facts that the respondents are all working as Telecom Mechanics and further the chequered events as pointed out above, in respect of the letter issued by the appellants dated 20.4.1999, wherein a distinction was sought to be drawn in regard to employees from the cadre of Regular Mazdoors including the writ petitioners, which has come up for challenge before the Central Administrative Tribunal and the Tribunal struck down the clause which creates discrimination between the two categories of Phone Mechanics, and set aside the impugned letter as per Orders dated 9.8.2000 with a direction that the respondents herein are entitled for such benefits. The said order of the Tribunal was also confirmed by a Division Bench of this Court in a writ petition filed by the appellants as per order in W.P.No.14744 of 2001 dated 16.10.2003. Further, even the S.L.P filed by the appellants was also rejected as per order dated 23.7.2004.

In view of the settled position of law as it stands now, is to the effect that Phone Mechanics who were appointed in the restructured cadre, do fall in Group `C' cadre and in spite of any such move to a different cadre, they would be entitled to similar such benefit as has been given to Group `C' employees. Since the respondents/petitioners are similarly placed, they will fall within the same category for the purpose of entitlement of higher pay scales.

However, admittedly, none of these respondents/ petitioners did join or sail with those who initially filed a case before the Tribunal in the year 1999 nor knocked

the doors of the Court of law even during the pendency of writ petitions filed by the appellants herein, which was ultimately disposed by this Court on 16.10.2003.

There is no dispute to the fact that though on par with those employees, the respondents/petitioners also become entitled for such benefits in terms of the orders of the Tribunal as well as that of this Court with effect from 01.8.1998, yet, the fact remains that there is no semblance of any persuasion on behalf of the respondents/petitioners to make any claim or to file any application. Even on a reading of the affidavit filed in support in the writ petitions filed by the respondents/ petitioners, it is seen that there is absolutely no whisper much less averment or explanatory for such delay and laches on their part. All these writ petitions are filed only in September,2005. It is also not their case that for any valid reason, they could not possibly approach the Tribunal or the Court. In the absence of any such explanation forthcoming, it is too difficult to say that the respondents/petitioners herein can safely be said to fall in line with those employees who had approached the Tribunal or this Court earlier.

There is no dispute to the basic principle that discrimination cannot be made in favour of recruits from one source against the recruits from the other source in the matter of further promotion as once they are absorbed in one cadre they formed one class as was held in **Roshan Lal Vs. Union of India** . I n **Doordarshan Cameramen's Welfare Association V. Union of India**, it was held that there shall not be any difference in the pay drawn while giving benefit of the respective pay scales to persons having the same length of service as their counterparts. However, the Supreme Court did take notice of the fact with a specific observation that there should not be any laches on the part of the petitioners in approaching the Court.

In **Mohd. Ameeruddin and others V. Osmania University, Hyd.,** a Division Bench of this Court presided over by the Chief Justice S.B.Sinha (as he then was), considering the scope of Article 226 of the Constitution of India, it was held that:

> "The persons who approached this Court after a long lapse of time despite the decision of this Court rendered in 1987 though their case is

covered by the decision of the Apex Court, may, however, form a separate and distinct class. In view of the decisions of the Apex Court the benefit of the judgment of the Apex Court cannot be made applicable to those who had approached this Court after long delay. Therefore, on the ground of laches alone, petitioners are not entitled to any relief.

It may be true that the concept of equality before law and equal opportunity of law as adumbrated in Article 14 of the Constitution of India may be held to be applicable even in relation to the decisions of the higher Courts. The State may also be under an obligation to treat all the litigants similarly situated equally. But, it would depend upon the facts and circumstances of each case. Where a party has lost his right due to delay, the Court should not come to his aid. It is one thing to say that a person has a right, but is another thing to say that as to whether having regard to his conduct the Court of equality shall grant relief. In a case of delay and laches, the Court, in appropriate cases, may, decline to grant such relief".

In view of the aforesaid principles, it can safely be said that there is any amount of delay and laches on the part of respondents/petitioners herein in approaching this Court under Article 226 of the Constitution of India apart from being extraordinary one is a discretionary one. Therefore, in spite of the fact that one is able to make out a case of entitlement on par with others even as per the principles laid down by the Apex Court, however, the delay and laches would always come in the way of exercising any such jurisdiction in their favour.

As pointed out earlier, none of the affidavits filed in support of the writ petitions whisper any explanatory account for such delay. Even the statements filed on behalf of the appellants herein point out due dates of entitlement. The principles laid down in the earlier decisions dates back to the year, 1988. In the circumstances, we hold that the respondents/petitioners are placed in a similar situation and are entitled to in law, for similar such benefits. However, having regard to the fact that there is considerable unexplained delay and laches, the said benefit can be restricted only from the date of the judgment of the learned single Judge rather than commencement of the year in which writ petitions are filed as held by the learned single Judge.

The appeals filed by BSNL viz., W.A.Nos.1959, 1983, 1994, 2003, 2004, 2015, 2019, 2020, 2021, 2024, 2025, 2030, 2032, 2037, 2044, 2047, 2066, 2112, 2281,2282,2291, 2310,2311,2338, 2339, 2341, 2372, 2373, 2374, 2378, 2390, 2391, 2392, 2393, 2411, 2413, 2422, 2423, 2489, 2491, 2492, 2493, 2494 of 2005 and WA.Nos.2600, 2601, 2602, 2603, 2604, 2605 and 2606 of 2005 are allowed in part. The direction given by the learned single Judge to the effect that the respondents/petitioners are entitled to the benefit of pay scale of Rs.4000-6000 on par with the Group-C employees with effect from the date of their entitlement is confirmed. But, the extension of monetary benefit stands modified to the effect that the respondents shall be extended the monetary benefit only with effect from the date of the judgment, namely, 6th September, 2005, but not 01.01.2005.

The Writ Appeals filed by the employees of BSNL, viz., W.A.Nos.1840, 2071, 2077, 2109, 2184, 2216 2268,2276 2403 and WA.No.2607 of 2005, claiming the benefit from the date of their entitlement, are dismissed. No order as to costs.

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B.PRAKASH RAO, J

26.12.2005

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DR.G.YETHIRAJULU, J

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THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE DR. JUSTICE G.YETHIRAJULU

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(Judgment of the Bench delivered by

Hon'ble Sri Justice B.Prakash Rao)

DATED : 26.12.2005

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